

MINUTES
MARCH 23, 2023 SPECIAL BOARD MEETING
CITY OF DELRAY BEACH POLICE OFFICERS' RETIREMENT SYSTEM

1. CALL TO ORDER, ROLL CALL

Chair Razor called the meeting to order at 10:06 a.m.

Board Members present: Chair Jeffrey Razor, Vice-chair Paul Weber, Secretary Meer Deen, Jim Hoesley, and Scott Privitera.

Also present: Pedro Herrera (Sugarman, Susskind, Braswell & Herrera as designated by City Attorney), Lisa Castronovo (City of Delray Beach), and Elizabeth Brown (City of Delray Beach)

Public attendees: Ronald Cohen, Lynn Gelin, Duane D'Andrea, Vincent Gray

2. AGENDA ADOPTION

MOTION made by Mr. Weber, seconded by Mr. Deen, to adopt the March 23, 2023 Special Board Meeting Agenda. In a voice vote by the members present, **Motion** passed 5-0.

3. COMMENTS

- a. Public Comments – None
- b. Board of Trustees of Police Officers' Retirement System
- c. Active and Retired Members of the System – None

4. INITIAL DISABILITY HEARING

a. Nicole Lucas

Mr. Herrera reviewed the disability hearing process. Mr. Herrera told the Trustees they had to make one of three motions: approve, deny or table the disability benefit claim. If the Trustees denied the claim, Ms. Lucas could file for a formal hearing of her duty-related disability application. If the Trustees denied Ms. Lucas's claim at the formal hearing, she could appeal the denial at the circuit court level at which point a judge would rule on the claim. If the judge ruled in favor of Ms. Lucas, Mr. Herrera would then recommend the Trustees adopt the judge's order.

Mr. Herrera explained that in the initial and formal disability hearings, the applicant bore the burden of proof based on the preponderance of the evidence. The threshold for disability was if the applicant could do the job of a police officer. Mr. Herrera told the Trustees they had five issues to consider: 1) did the applicant suffer an illness or injury, 2) was such illness/injury suffered in the line of duty, 3) did the illness/injury cause the applicant any disability, 4) if the applicant is suffering a disability, was the disability permanent, and 5) was the applicant totally and permanently disabled from rendering useful and efficient service as a police officer for the City?

Attorney Ronald Cohen, on behalf of Ms. Lucas, summarized her history and the events leading up to her filing a disability application. After George Floyd's death in May 2020, and the Black Lives Matter activist group's subsequent calls for justice, Ofc. Lucas posted "all lives matter" on her personal Facebook account. After Chief Sims saw the post, Ofc. Lucas was put on administrative leave. Once placed on leave, officers went to Ofc. Lucas's home and, in front of her children, took her officer-related items including her City-issued police car.

Prior to May 2020, Ofc. Lucas sought psychological therapy for various reasons. After May 2020, she sought therapy as she felt demeaned by the actions the police department took against her. In August 2020, Ofc. Lucas returned to work and continued working through December 2021, though she struggled. In December 2021, a white Boynton Beach police officer in his car struck and killed a black 13-year-old riding a motorcycle. The incident bothered Ofc. Lucas since she did not want to be profiled as a racist white officer. On Dec 31, 2021, she informed her sergeant she no longer carried her weapon. She was once again placed on administrative leave.

In January 2022, the City sent Ofc. Lucas to a fitness for duty examination. The physician who did the exam opined Ofc. Lucas was temporarily unfit for duty. When Ofc. Lucas was reevaluated a month later, the psychiatrist opined she could not return to work as a police officer nor would she ever be able to do that type of work again. In May 2022, Dr. Sorial determined Ofc. Lucas had reached MMI. Ofc. Lucas did whatever the City asked her to do in an attempt to return to work, but her condition worsened. In June 2022, she filed for a disability retirement. The City terminated Ofc. Lucas in August 2022.

Discussion ensued. Mr. Weber stated that since no specific incident happened while Ms. Lucas was on duty, the disability was not duty related. Mr. Deen said that, based on his reading of Florida statutes regarding what constitutes a disability for police officers, Ms. Lucas was not disabled. Mr. Cohen pointed out that the City's Ordinance allowed disabilities to be granted for both physical and mental disabilities; Mr. Herrera added the Florida statute was not meant to be an all-inclusive list of what would be accepted for a mental disability.

Mr. Weber said Ms. Lucas created her own issue when she posted on Facebook because once she did that, she violated department policy after which she was held accountable. Mr. Cohen responded that people react differently to being held accountable and the City's reaction to her posting was what started her issues while at work.

Chair Rasor said Lisa Faraldo, the clinical psychologist the Board hired to evaluate Ms. Lucas, determined that Ms. Lucas's condition was not permanent. Mr. Cohen responded that the issue at hand was whether Ms. Lucas could work as a police officer for the City which, per various doctors, she could do no longer. Mr. Cohen added the state pays premium tax monies to cover plans for police officers who become disabled if they can no longer work as an officer. The only doctor stating Ms. Lucas could continue to work as a City police officer was the one the Board sent her to; all the other physicians were in agreement that she no longer could.

Mr. Hoesley said he thought Ms. Lucas was a troubled individual and asked Mr. Herrera to tell the Board how they should proceed. Mr. Herrera directed the Trustees to the five issues he detailed at the beginning of the hearing. He said the first two issues the Trustees should consider were 1) was there a disability? and 2) if there was a disability, was it job-related? Mr. Herrera said there was existing case law stating if the employer terminated an employee for medical reasons, then the board did not have to determine if the disability was total since the termination itself was "total." The board would still have to determine, however, if the disability was duty- or nonduty-related. Mr. Hoesley asked Mr. Herrera if the Board could offer Ms. Lucas a nonduty-related disability to which Mr. Herrera responded they could, but Ms. Lucas could appeal that decision and request a formal hearing on the duty-related disability application she filed.

Mr. Deen asked if the Board should send Ms. Lucas to a psychiatrist for another independent medical evaluation in addition to the one done by the psychologist. Mr. Herrera said the Trustees could rely on the report they already had. Mr. Cohen noted that Dr. Faraldo was not a physician as required by the City Ordinance which stated the Board had designate a medical committee composed of at least one physician once a member submitted a disability retirement application. In response, Mr. Herrera told the Trustees they had two options: 1) send Ms. Lucas to a physician, or 2) rely on the reports from the physicians already on record.

A ten-minute break was taken.

MOTION made by Mr. Hoesley, seconded by Mr. Deen, to table Ms. Lucas's disability application until after an independent medical evaluation with a physician was completed. In a roll call vote, **Motion** passed 5-0.

5. DUNE REAL ESTATE FUND III

David Julier with AndCo Consulting explained that Dune Real Estate Partners was looking to recapitalize Dune Real Estate Fund III and had signed a contract with Landmark who would contribute \$125M to the fund. When asked what the Retirement System would get out of the recapitalization, Mr. Julier replied the System could roll \$1.1M into the new fund for four years with a one-year extension option or receive \$222,000 cash and roll \$850,000 into the new fund.

Mr. Julier said that once the contract with Landmark was finalized and the sale was official, the Fund III investors would only have a few days to decide what they wanted to do. Mr. Hoesley asked Mr. Julier what he recommended. Mr. Julier replied AndCo was still evaluating the sale, but would most likely recommend take the cash and roll the balance into the new fund. Ms. Castronovo said that since the Firefighters' Board would not meet until after a decision had to be made, they authorized their Chair to make the final decision based on AndCo's final recommendation.

MOTION made by Mr. Weber, seconded by Mr. Deen, authorizing Chair Razor to make the final decision regarding Dune Real Estate Fund III based on AndCo's recommendation with such decision subject to ratification at the next Board meeting. In a voice vote by the members present, **Motion** passed 5-0.

6. MISSIONSQUARE

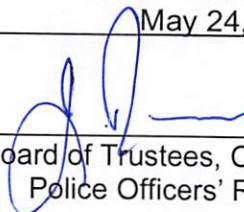
Mr. Castronovo told the Trustees the Firefighters' Retirement System Board had, at their last meeting, authorized NFP to issue an RFP for defined contribution plan management and administrative services for their DROP plan and wanted to include the Police Officers' and General Employees' DROP plans in the RFP if their respective Boards wanted to be included.

MOTION made by Mr. Weber, seconded by Mr. Deen, to join the Board of Trustees of the Firefighters' Retirement System in seeking an RFP for DROP plan management and administrative services. In a voice vote by the members present, **Motion** passed 5-0.

ADJOURNMENT

The meeting adjourned at 12:45 p.m.

I, Jeffrey Rasor, the undersigned, am the Chair
of the Board of Trustees of the City of Delray Beach Police Officers' Retirement System ("Board").
The information provided herein is the Minutes of the March 23, 2023 special meeting of said
body. These Minutes were formally approved and adopted by the Board on
May 24, 2023.



Board of Trustees, City of Delray Beach
Police Officers' Retirement System

NOTE TO THE READER: If the Minutes you have received are not complete as indicated above, this means these are not the official minutes of the Board of Trustees of the City of Delray Beach Police Officers' Retirement System. **Minutes** will become official only after they have been reviewed and approved, which may involve some amendments, additions or deletions to the Minutes as set forth above.

NOTE: upon official approval by the Board of Trustees, the Minutes will be posted on the City of Delray Beach website at: www.delraybeachfl.gov.